IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1099 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMATSINH MALSINGH WAGHELA (THAKORE) - Applicant

Versus

STATE OF GUJARAT - Respondent

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Appearance :

MR VIRAT G POPAT for Applicant : 1,
Mr. U.R. Bhatt, Ld. APP for Respondent.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 26/09/2005

ORAL JUDGMENT

Leave to amend the prayer clause is permitted.

1.Rule. Mr. U.R. Bhatt, learned APP waives service of

rule on behalf of respondent State. With the consent of learned counsels for the parties this matter is taken up for final disposal.

2. The petitioner has filed the present petition under Article 227 of the Constitution of India, read with Section 482 and section 451/457 of Cr.P.C., essentially for releasing the vehicle i.e. Maruti Car bearing Registration No. GJ-6-K-9212 lying at present in the custody of Gadh police station during pendency of the trial in connection with the police station C.R. No: 62/2003. The petitioner has submitted that he is the owner of the subject maruti car. The vehicle was used by his brother on 31/5/2003 for illegal transportation of liquor and the same was seized by the police officers on the same day and the case under Bombay Prohibition Act came to be registered.

3. The petitioner preferred an application for custody of maruti car before the learned Jt. JMFC on 3/7/2003 which came to be rejected on 21/7/2003. The petitioner thereafter preferred Criminal Revision Application No. 22 of 2003 which also came to be rejected on 18/8/2003.

4. The petitioner preferred this petition for obtaining interim custody of the vehicle during pendency of the trial, and challenging the orders passed by learned Magistrate on 3/7/2003 and the Sessions Court dated 18/8/2003 respectively.

5. The petitioner has submitted that the learned JMFC as well as Sessions Court ought to have appreciated the fact that the vehicle in question, if not put to proper run, is likely to be render non functional and would be rendered useless. The releasing of vehicle and handing over the custody thereof to the petitioner, who is appearing to be the registered owner as per the certificate of registration, would in no way jeopardize the case of the prosecution. The petitioner's counsel has submitted that the application, if any, made for confiscating the said vehicle also will have no adverse impact as during pendency of the trial the order of confiscation is not straightway likely to be made. The petitioner's counsel submits that when the offence itself is yet to be proved, the order of confiscation, if any, would not be prejudicing the final order in the trial.

6. The learned counsel for the petitioner's relied upon the decision of the Apex Court in case of SUNDERBHAI AMBALAL DESAI Vs. STATE OF GUJARAT, reported in (2002) 10 SCC pg. 283 and submits that, in such an event ordinarily the vehicle is required to be handed over to the registered owner. Non granting the custody of the vehicle is in no way helping the prosecution. He has also relied upon the judgment of this Court in case of RAKESHKUMAR KACHARABHAI PRAJAPATI Vs. STATE OF GUJARAT in Special Criminal Application No. 180 of 2004 dated 21/12/2004 wherein this Court has ordered handing over custody of the vehicle involved in the offence.

7. The counsel of the petitioner submits that the interim custody of the subject vehicle, therefore, deserves to be ordered to be handed over to the present petitioner on the strictest conditions possible, so as to ensure the production of vehicle as and when required during the trial. Learned counsel has further submitted that the petitioner is ready & willing to establish his bonafide by depositing Rs.30,000/- before the concerned trial court for getting interim custody of the vehicle pending the trial which may be subject to the final

outcome of the trial.

8. Learned APP Shri. Bhatt with all vehemence at his command opposed the present application. He submits that the vehicle is involved in serious offence under Prohibition Act and as many as 378 bottles containing liquor were seized from the vehicle. In view of this the order passed by the trial court and confirmed by the Sessions Court does not call for any interference under section 227 of the Constitution of India. Therefore, Shri. Bhatt has submitted that the vehicle is otherwise also liable to be confiscated as it is clearly provided under the Prohibition Act. In view of this, he submitted that the order passed by learned trial court and Sessions court may not be interfered with.

9. Shri. Bhatt, however, could not point out any cogent reason for not releasing the vehicle by way of interim custody to the petitioner, nor could he point out as to how the facts discussed in the case of Rakeshkumar Kachrabhai Prajapati (supra) is different than that of the present one.

10. This Court has perused the record and the judgment of the trial court as well as of the revisional court. The provision of section 451 deserves to be appreciated in its true perspective. The provision of section 451 of Cr.P.C., empowers the concerned court to exercise its discretion in respect of disposal of the property pending the trial in certain cases. The decision of the Apex Court in case of Sunderbhai Ambalal Desai (supra) is certainly applicable in the facts of the present case. The decision of this Court in case of Rakeshkumar Kachrabhai Prajapati in Special Criminal Application No. 180 of 2004 which has followed the decision of the Supreme Court in case of Sunderbhai Ambalal Desai (supra) is also be applicable in respect of present facts & circumstances of the case.

11. It also deserves to be considered that the petitioner has volunteered to deposit Rs.30,000/= with the trial court for establishing his bonafide that the vehicle is going to be maintained and produced as and when required before the court. In view of these facts & circumstances, if the interim custody of subject vehicle if ordered to be given to the petitioner, no irreparable injury is going to cause to the case of the

prosecution. Therefore, subject vehicle is ordered to be handed over to the petitioner on the following conditions;

(i)that the petitioner shall deposit Rs.30,000=00 (Rs. Thirty thousand only) before the trial court (before 2nd Jt. Judicial Magistrate (JD), Palanpur on or before 14/10/2005, and shall produce the receipt thereof before the concerned police station before the interim custody is transferred to the petitioner;

(ii) petitioner shall furnish one surety of Rs.50,000/-;

(iii) that the said vehicle shall be preserved in good condition by the petitioner and that the said vehicle shall not be transferred,alienated or in any way the petitioner shall not part with the possession of the said vehicle;

(iv) that the petitioner shall not permit any misuse of the said vehicle whenever it is put to motion;

(v)that the said vehicle shall be produced before the Court as and when it is required by the trial court

even in pursuance of application filed by the State under section 99 and 100 of the Bombay Prohibition Act;

(vi) that the petitioner shall not use the said vehicle for any illegal purpose and shall not permit the user thereof for illegal purpose;

(vii) that on breach of any of the above conditions, the investigating officer shall be at liberty to re-seize the said vehicle.

11.This order is only for interim custody of the vehicle and it is made clear that this order shall have no adverse impact upon the application, if any, made for the confiscation/re-seize.

12. The petition is partly allowed. Rule is made absolute to the above said extent. Direct service is permitted.

[S.R. BRAHMBHATT, J]

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